

701—19.12(422,423) Construction contracts with tax exempt entities. This rule applies to exempt sales of building materials, supplies, and equipment to certain persons performing construction contracts for sponsors which are designated exempt entities and the continuing right of designated exempt entities and other persons to seek refund of taxes paid by persons performing construction contracts.

19.12(1) Definitions.

“Construction contract” has the same meaning as the definition of that phrase set out in rule 701—19.7(422,423).

“Designated exempt entity” includes only the following: a private nonprofit educational institution in this state, nonprofit private museum in this state, tax-certifying or tax-levying body or governmental subdivision of the state, including the state board of regents, state department of human services, state department of transportation, a municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which do not have earnings going to the benefit of an equity investor or stockholder.

“Exemption certificate” means a certificate which is complete and correct according to the requirements of this rule. A certificate which is complete and correct according to the requirements of this rule must contain, at a minimum, the following information: the name and address of the designated exempt entity; the federal identification number of the exempt entity; the name of the construction project or the project number for which exemption is requested; and a general description of that project. The certificate shall also contain the contractor’s, subcontractor’s, builder’s, or manufacturer’s name and address. The certificate must be completed, signed, dated, and issued by an authorized official of the designated exempt entity. The certificate is valid only for the stated construction project.

“Purchasing agent authorization letter” means a letter from a designated exempt entity to a contractor, subcontractor, builder or manufacturer authorizing the contractor, subcontractor, builder, or manufacturer to purchase tangible personal property consisting of building materials, supplies, or equipment free from tax for a construction project of which the designated exempt entity is the sponsor. The letter shall set out the contract date or the contract letting date and give a general description of the construction contract to which it applies. The letter shall state that it is the responsibility of the contractor, subcontractor, builder, or manufacturer to keep records identifying the property purchased exempt from tax and verifying that the property purchased was used in the contract with the exempt entity. The letter shall also state that property purchased tax-free and not used in the contract with the exempt entity is subject to tax which must be paid directly to the Iowa department of revenue.

19.12(2) Exempt purchases, withdrawals from inventory, and manufacturers’ fabrication costs. This subrule and the exemptions it describes are applicable to construction contracts entered into on or after January 1, 2003.

a. Contractors, subcontractors, and builders who purchase building materials, supplies, or equipment intending to use that property in the performance of a construction contract with a designated exempt entity shall purchase the property from a retailer exempt from tax if the property is subsequently used in the performance of that contract and the contractor, subcontractor, or builder presents a purchasing agent authorization letter and an exemption certificate issued by the designated exempt entity to the retailer.

b. The withdrawal of building materials, supplies, or equipment from inventory by a contractor, subcontractor, or builder who is also a retailer is exempt from tax if the materials are withdrawn for use in construction performed for a designated exempt entity and an exemption certificate is received from the entity.

c. The “fabricated cost” (see rule 701—16.3(422,423)) of building materials, supplies, or equipment purchased and consumed by the manufacturer of such property in the performance of a construction contract for a designated exempt entity is exempt from tax if a purchasing agent authorization letter and an exemption certificate are received from the exempt entity and presented to a retailer.

d. Sales, withdrawals, or a manufacturer’s consumption of building materials, supplies, or equipment used in the performance of a construction contract for purposes other than incorporation

into real property with subsequent loss of identity as tangible personal property are not eligible for this subrule's exemption.

19.12(3) *Notification to the department.* A designated exempt entity shall notify the department when any purchasing agent authorization letter and exemption certificate have been issued for a construction contract project. The notification shall, so far as practicable, describe the project and identify the contractors, subcontractors, builders, and manufacturers which will be using the letters and certificates.

19.12(4) *Exemption certificates taken in good faith.* A retailer who accepts an exemption certificate described in this rule has all the rights and obligations of a retailer described in 701—subrules 15.3(1) and 15.3(2).

19.12(5) *Contracts with designated exempt entities, businesses in economic development areas, and rural water districts organized under Iowa Code chapter 504A—eligibility for refund in the absence of eligibility for exemption.* Contractors, subcontractors, and builders who enter into written construction contracts with designated exempt entities, businesses in economic development areas, or rural water districts organized under Iowa Code chapter 504A can still be required to remit sales tax on building materials, supplies, and equipment to their suppliers or to pay a corresponding use tax. Reasons for this will vary; these reasons are not intended to be all-inclusive. In the case of a contractor, subcontractor, or builder entering into a written construction contract with a designated exempt entity, the requirement to remit or pay tax can result from failure to secure an exemption certificate or purchasing agent authorization letter. In the case of a contractor, subcontractor, or builder entering into a written construction contract with businesses in economic development areas or rural water districts organized under Iowa Code chapter 504A, the requirement to remit or pay tax can result from the fact that businesses in economic development areas or rural water districts organized under Iowa Code chapter 504A are not designated exempt entities and thus not eligible to claim their exemption.

Even if no right to claim the designated exempt entity exemption exists, under the provisions of Iowa Code section 422.45(7) or 15.331A(1), a contractor is still required to provide a designated exempt entity which has not properly claimed its exemption, business or supporting business in an economic development area, or a rural water district organized under Iowa Code chapter 504A with a statement before final settlement of the contract, showing the amount of sales of goods, wares or merchandise or services rendered, furnished or performed and used in the performance of the contract, and the amount of sales and use taxes paid on these items. The department provides Form 35-002 for this purpose. If final settlement occurred before May 20, 1999, the governmental unit, private nonprofit educational institution, nonprofit private museum, business or supporting business, or rural water district organized under Iowa Code chapter 504A has six months after the final settlement to file a claim for refund on Form 35-003 for sales and use taxes paid by the contractor. If final settlement occurs on or after May 20, 1999, a period of one year after the date of final settlement is allowed for filing a claim for refund. The failure of a contractor to remit taxes on materials, supplies, and equipment used in the performance of a construction contract does not relieve the contractor of liability even though the refund was not or cannot be claimed. See *Dealers Warehouse Co. Inc. v. Department of Revenue*, Jasper County District Court, 90-3910936, December 6, 1978.

If a construction contract is a contract which includes machinery or equipment with installation (see rule 701—19.8(422,423)) or a mixed contract (see rule 701—19.9(422,423)), the machinery and equipment must be purchased tax-free because the machinery and equipment will be resold to the contract sponsor. There will be no sales tax charged on resales of machinery and equipment to sponsors which are designated exempt entities, businesses in economic development areas, or rural water districts organized under Iowa Code chapter 504A since these sales are exempt under Iowa Code sections 422.45(5) and 422.45(8). See also 261—subrule 58.4(7) for an explanation of the exemption for sales of machinery and equipment to businesses or supporting businesses in an economic development area.

This rule is intended to implement Iowa Code sections 357A.15, 422.42, 422.45 and 422.47.